STATE OF MICHIGAN

COURT OF APPEALS

JAMES COOMBS,

Plaintiff-Appellant,

v

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Defendant-Appellee.

UNPUBLISHED
August 1, 1997

No. 197245
Oakland Circuit Court
LC No. 94-482816

Before: Doctoroff, P.J., and MacKenzie and Griffin, JJ.

PER CURIAM.

This case arises out of an automobile collision in which plaintiff suffered injuries. The parties entered into a partial settlement and thereafter agreed to submit the remaining claim to the trial court on briefs for a decision based on stipulated facts. The trial court held in defendant's favor and dismissed the cause of action with prejudice. Plaintiff now appeals as of right. We affirm.

Plaintiff first argues that the trial court erred in determining that he was not able to recover the full cost of medical expenses that were originally billed after his auto accident. The bills, or a portion of them, were paid by Medicaid. Thereafter, the records of the medical providers showed zero balances owing. Plaintiff was never billed for the services and never paid for any services. However, in this lawsuit, plaintiff complained that he should be given the full amount of those bills. We disagree.

MCL 500.3107; MSA 24.3107 provides:

> (1) Except as provided in subsection (2), personal protection insurance benefits are payable for the following:
>
> (a) Allowable expenses consisting of all reasonable charges incurred for reasonably necessary products, services and accommodations for an injured person's care, recovery, or rehabilitation. . . .

In order to recover an "allowable expense," there are three factors that must be met: (1) the charge must be reasonable; (2) the expense must be reasonably necessary; and (3) the expense must be incurred. *Davis v Citizens Ins Co*, 195 Mich App 323, 326; 489 NW2d 214 (1992).

In this case, plaintiff did not incur any medical expenses, and thus the third factor of the above test has not been met. Although plaintiff sought and received treatment, there was no evidence that he was ever billed for treatment or that he ever paid for any treatment. In *Manley v DAIIE*, 425 Mich 140, 157; 388 NW2d 216 (1986), our Supreme Court indicated that expenses were incurred when the established medical provider sent a bill for the services. Further, the Court indicated that the insurer was not obligated to reimburse the plaintiff until it received *evidence of payment* for the services for which the insured was billed. *Id.* at 157-158 (emphasis added). See also *Moghis v Citizens Ins Co*, 187 Mich App 245, 247; 466 NW2d 290 (1991), where this Court indicated that the insurer was only obligated to pay where there was evidence that the services were actually rendered *and the actual cost expended.*

In this case, after Medicaid made payments, plaintiff was never billed nor did he make any payments. Moreover, defendant agreed on the record to defend and indemnify plaintiff for any claims that any medical providers would thereafter bring for any other amounts related to the accident. If plaintiff was awarded payment for the amounts that were originally billed, he would receive a double benefit – the medical services *and* the amount those services cost. Plaintiff was entitled to recover for the costs he incurred and nothing more. There is no authority that would support a double award to plaintiff; such an outcome would grant him an undeserved windfall. In finding that plaintiff is not entitled to recover for benefits he never paid, we specifically distinguish this case from those where the plaintiffs had uncoordinated no-fault and health insurance policies and were entitled to double recoveries. See *Smith v Physicians Health Plan*, 444 Mich 743; 514 NW2d 150 (1994) and *Nasser v ACIA*, 435 Mich 33; 457 NW2d 637 (1990). If there were outstanding bills, we would hold that defendant was required to pay either plaintiff or the medical providers for those amounts. *Hicks v Citizens Ins Co*, 204 Mich App 142; 514 NW2d 511 (1994). However, where there is nothing owed and plaintiff is protected from future claims, this Court will not require the insurer to pay plaintiff for the amounts that were originally billed.

Similarly, plaintiff has no right to collect a duplicate sum with regard to the payments made by Medicaid. Plaintiff was not entitled to any Medicaid benefits because no-fault insurance covered his accident. *Workman v DAIIE*, 404 Mich 477; 274 NW2d 373 (1979), *Hicks, supra* at 145; *Botsford Hosp v Citizens Ins Co*, 195 Mich App 127, 138; 489 NW2d 137 (1992). Therefore the Medicaid payments were made in error and Medicaid, as subrogee of plaintiff's rights, may seek reimbursement for those amounts. *Workman, supra* at 501-502. Because plaintiff's rights were subrogated to Medicaid, plaintiff is not entitled to seek payment for those amounts. *Id.* Plaintiff can only seek reimbursement for expenses incurred outside of the Medicaid payments, MCL 400.106(1)(b)(ii); MSA 16.490(16)(1)(b)(ii). However, in this case, we ruled that no such expenses were incurred, thus, plaintiff is not entitled to any payment.

Moreover, we note that plaintiff has suffered no injury in this case because defendant expressly promised to defend and indemnify plaintiff should Medicaid seek reimbursement from

him or should any of the medical providers determine that additional sums are owed. *McGill v Auto Ass'n of Michigan*, 207 Mich App 402, 407-407; 526 NW2d 12 (1994). The trial court correctly determined that plaintiff was not owed any sums for medical expenses.

Plaintiff next argues that the trial court's entry of an order of dismissal was inappropriate and that the trial court should have allowed him to proceed to trial on the medical expense issue or should have sought a voluntary dismissal of the case instead of entering a dismissal with prejudice. Further, plaintiff argues that a judgment setting forth the prior, partial settlements of the parties would have been more appropriate than the order of dismissal. We decline to address these issues. Plaintiff cites no authority to support a claim that dismissal was inappropriate under the circumstances. The issue is therefore deemed abandoned. *Magee v Magee,* 218 Mich App 158, 161; 553 NW2d 363 (1996).

In addition, we note that where there was a prior settlement placed on the record as to wage loss and replacement services, the settlement did not need to be reduced to writing. MCR 2.507(H). Because the settlement in this case was placed on the record, it shall be enforced.

Affirmed.

/s/ Martin M. Doctoroff
/s/ Barbara B. MacKenzie
/s/ Richard Allen Griffin